

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Smith *et al.*

Serial No.: 10/786,466

Filed: February 25, 2004

Confirmation No. 9331

For: **FIRE RESISTANT CONSTRUCTION**

Examiner: J. Chapman

Art Unit: 3635

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**DECLARATION UNDER 37 CFR §1.132**  
**OF CALVIN L. TRUMBO**

I, Calvin L. Trumbo declare that:

1. I have been granted the degrees of BS in Mechanical Engineering and MBA from the University of Colorado.
2. I have 20 years of experience in product development, marketing and business management in the insulation and building material industry.
3. I am currently the Director of Residential Construction and Fire Sound Products for FireSoundProducts, ("FireSoundProducts") which is a division of US GreenFiber, LLC, ("GreenFiber") whose principal place of business is 2500 Distribution Street, Charlotte, NC, 28203. GreenFiber is the assignee of US patent application 10/786,466. GreenStone Industries, Inc. ("GreenStone") was a predecessor of GreenFiber and eventually merged with GreenFiber. I have been with GreenFiber for 4 years.
4. Patent application 10/786,466 pertains to a fire resistant wall. This wall is referred to as "U370", or generically as the "75% wall".

5. In my position with GreenFiber I have access to and knowledge of past and present financial records. In this capacity I have been asked to compile sales data for the time spanning 2004 to 2007 related to the sales of two different products, GreenFiber's 75% wall<sup>1</sup> and GreenStone's "47.5% wall"<sup>2</sup>. This data is represented below<sup>3</sup>:

<u>PRODUCT</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
47.5% Wall	\$90,000	\$0	\$0	\$0
75% Wall	0	\$195,462	\$1,016,670	\$828,000

6. During this same time the housing industry fluctuated, as demonstrated by the number of new construction projects started (known as "starts" in the industry).<sup>4</sup>

<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
42,300	41,100	42,700	31,700

7. When viewed within the context of housing industry fluctuations, the 75% wall's market share steadily increased between 2005 and 2007, as reflected by sales per starts.<sup>5</sup>

<u>2005</u>	<u>2006</u>	<u>2007</u>
\$4.76	\$23.81	\$26.12

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<sup>1</sup> See Attachment A.

<sup>2</sup> See Attachment B.

<sup>3</sup> This data was compiled from FireSoundProducts sales database. 2004 sales estimated.

<sup>4</sup> From US Census Bureau's New Privately Owned Housing Units Started Annual Data, Structures with 2-4 units across all US regions. See <http://www.census.gov/const/startsann.pdf>. See Attachment C.

<sup>5</sup> Calculated as (Year's Sales/Year's Starts)

8. I am aware of a competitor who sold "knock-off" 75% walls in 2007. Since the 2007 sales, and sales per starts data above do not reflect the "knock-offs", the actual number of 75% walls sold, and their market share, is actually higher.
9. I also compiled advertising expenditures for the time spanning 2004 to 2007 related to the 75% wall. This data is represented below<sup>6</sup>:

<u>PRODUCT</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
75% Wall	\$0	\$25,000	\$58,194	\$24,638

10. I consider these advertising expenditures about average for similar products in the industry.
11. In my professional opinion, the 75% wall's commercial success can be attributed to its utility in multi-level (e.g. 2 to 4 story) dwellings. This opinion is based on the significant increase in sales, with no corresponding significant increase in advertising expenditures or out-of-the-ordinary sales or marketing efforts during that period.
12. As mentioned above, the 75% wall has been copied by others. Specifically, the competitor copied, then successfully tested, the duplicate at the U.L. in 2007. This "knock-off" is also known as U382.<sup>7</sup> This competitor stated to me in the presence others that GreenFiber had "led the way" in showing everyone else how to successfully pass a two hour fire test at 75% load.
13. It is my opinion that the 75% wall satisfied a long-felt need in the industry for a relatively inexpensive and simple design. By way of example, the aforementioned competitor had a separate U.L. approved assembly (U.L. 360) that was more difficult and costly to build because of significant construction

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<sup>6</sup> This data compiled from FireSoundProducts operating budget.

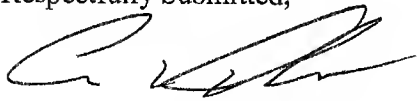
<sup>7</sup> See Attachment D.

detail differences. It is my understanding that once the "knock-off" 75% wall passed, this competitor switched all their sales and marketing efforts to the new wall (U382).

14. It is my professional opinion that the difference between the 47.5% wall and the 75% wall is critical from an economic and commercial standpoint.

15. By signing my name below I declare that all statements made in this document of my own knowledge are true, and all statements made on information and belief are believed to be true. I further declare that these statements are made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing on the application.

Respectfully Submitted,



Calvin L. Trumbo



DATE